

NO. 05-16738

RECEIVED
JAN 04 2006
U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT
TOMAS M. KATZ, CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GILBERT GITHERE,

Plaintiff-Appellant

vs.

CONSOLIDATED AMUSEMENT CORPORATION, INC.;
JOHN TELLIS, General Manager of Consolidated Amusement, Inc.,

Defendants-Appellees

AN APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MOTION FOR SECOND ENLARGEMENT OF
TIME TO FILE OPENING BRIEF

DECLARATION OF COUNSEL

EXHIBITS "A" - "C"

CERTIFICATE OF SERVICE

ANDRÉ S. WOOTEN 3887
Century Square, Suite 1909
1188 Bishop Street
Honolulu, Hawai'i 96813
Telephone: (808) 545-4165
Attorney for Plaintiff-Appellant

EXHIBIT "D"

NO. 05-16738

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GILBERT GITHERE,	) CIVIL NO. 04-00116 DAE-LEK
)
Plaintiff-Appellant,	) MOTION FOR SECOND
	) ENLARGEMENT OF TIME TO FILE
vs.	) OPENING BRIEF
)
CONSOLIDATED AMUSEMENT)
CORPORATION INC.; JOHN)
TELLIS, General Manager of)
Consolidated Amusement Inc.,)
)
Defendants-Appellees,)
)
and)
)
ALOHA STADIUM AUTHORITY)
INC.,)
)
Defendant.)
)
)

MOTION FOR SECOND ENLARGEMENT
OF TIME TO FILE OPENING BRIEF

Comes now Plaintiff-Appellant GILBERT GITHERE, by and through his attorney of record, André S. Wooten, who hereby files this Motion for a Second Enlargement to Time of 30 days to file the Opening Brief of the Plaintiff-Appellant

in this case as we have not yet receiving the transcript, as the court reporter was out of town last week and also due to the impending Christmas and Holiday Season and family and other case commitments for counsel's time.

This Motion is brought pursuant to Rules 26(b) and 27 of the Federal Rules of Appellate Procedure and is supported by the attached Declaration of Counsel and the records and files of this case.

DATED: Honolulu, Hawaii, Jan 3, 2006.



ANDRE' S. WOOTEN
Attorney for Plaintiff-Appellant

NO. 05-16738

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GILBERT GITHERE,	) CIVIL NO. 04-00116 DAE-LEK
)
Plaintiff-Appellant,	) DECLARATION OF COUNSEL
)
vs.)
)
CONSOLIDATED AMUSEMENT)
CORPORATION INC.; JOHN)
TELLIS, General Manager of)
Consolidated Amusement Inc.,)
)
Defendants-Appellees,)
)
and)
)
ALOHA STADIUM AUTHORITY)
INC.,)
)
Defendant.)
)
)

DECLARATION OF COUNSEL

ANDRE' S. WOOTEN hereby declares under penalty of perjury as follows:

1. Declarant is the attorney of record for Plaintiff-Appellant in the above-entitled matter and is, therefore, aware of the history of this matter.

2. The District Court of Hawaii has granted Defendant's Order to interview Plaintiff-Appellant on January 20, 2006, regarding collection of \$4,300.00+ costs bill in this case.

3. Plaintiff-Appellant filed a Motion for Stay of Execution of Collection of Costs Billed Pending Appeal. However, the hearing is set after the exam, on February 24, 2006.

4. The Court denied Plaintiff's Ex Parte Motion to Shorten Time for said hearing.

5. Hence, Plaintiff-Appellant requests that the Ninth Circuit Court of Appeals grant his Motion for Stay of Execution of Collection of Costs Billed pending this appeal determination.

6. Attached hereto as Exhibit "A" is a true and correct copy of Defendant's Order for Examination.

7. Attached hereto as Exhibit "B" is a true and correct copy of Plaintiff's Motion for Stay of Execution of Costs Billed Pending Appeal, filed on December 23, 2005.

8. Attached hereto as Exhibit "C" is a true and correct copy of Plaintiff's Ex Parte Motion to Shorten Time for Hearing on Motion for Stay of Execution of Collection of Costs Billed Pending Appeal, filed on December 23, 2005.

Wherefore, Declarant respectfully requests that the Court grant the instant Motion for Second Enlargement of Time to File Opening Brief and that Plaintiff-Appellant have until Feb 10, 2006 to file his Opening Brief, in the interest of substantial justice for good cause stated above.

Further, Declarant sayeth naught.


ANDRE' S. WOOTEN
Attorney for Plaintiff-Appellant

EXHIBIT “A”

TORKILDSON, KATZ, FONSECA,
MOORE & HETHERINGTON,
Attorneys at Law, A Law Corporation

RICHARD M. RAND 2773-0
(rmr@torkildson.com)

TAMARA M. GERRARD 6153-0
(tmg@torkildson.com)

HEATHER M. RICKENBRODE 8174-0
(hmr@torkildson.com)

700 Bishop Street, 15th Floor
Honolulu, HI 96813-4187
Telephone: (808) 523-6000
Facsimile: (808) 523-6001

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

DEC 09 2005

at 2 o'clock and 15 min. M
SUE BEITIA, CLERK

LODGED

Attorneys for Defendant
CONSOLIDATED AMUSEMENT
COMPANY, LTD. AND JOHN TELLIS

DEC 06 2005

CLERK, U. S. DISTRICT COURT
DISTRICT OF HAWAII

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,

Plaintiff,

v.

CONSOLIDATED AMUSEMENT
CORPORATION, LTD.; ALOHA
STADIUM AUTHORITY, INC., and
John Tellis, General Manager,

Defendants.

CIVIL NO. CV04 00116 DAE LEK

DEFENDANTS CONSOLIDATED
AMUSEMENT COMPANY, LTD.
AND JOHN TELLIS' EX PARTE
MOTION FOR EXAMINATION OF
JUDGMENT DEBTOR;
DECLARATION OF TAMARA M.
GERRARD; DECLARATION OF
HEATHER M. RICKENBRODE;
EXHIBITS "A" THROUGH "H";
ORDER GRANTING
DEFENDANTS CONSOLIDATED
AMUSEMENT COMPANY, LTD.
AND JOHN TELLIS' EX PARTE
MOTION FOR EXAMINATION OF
JUDGMENT DEBTOR;

CERTIFICATE OF SERVICE

DATE: January 20, 2006

TIME: 9 am

JUDGE: Leslie E Kobayashi

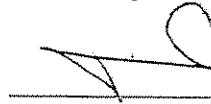
DEFENDANTS CONSOLIDATED AMUSEMENT
COMPANY, LTD. AND JOHN TELLIS' EX PARTE
MOTION FOR EXAMINATION OF JUDGMENT DEBTOR

Defendants and Judgment Creditors CONSOLIDATED AMUSEMENT COMPANY, LTD. and JOHN TELLIS, by and through their undersigned attorneys, hereby move this Honorable Court, ex parte, for an order to be made and entered herein citing Plaintiff and Judgment Debtor Gilbert Githere to appear before this Honorable Court in its courtroom in Honolulu, Hawaii for examination as a judgment debtor, as provided by law.

This Motion is made pursuant to Rule 69(a) of the Federal Rules of Civil Procedure, as amended, the Declarations and Exhibits attached hereto and made a part hereof, and the pleadings and records in this action.

DATED: Honolulu, Hawaii, December 6, 2005.

TORKILDSON, KATZ, FONSECA,
MOORE & HETHERINGTON,
Attorneys at Law, A Law Corporation


RICHARD M. RAND
TAMARA M. GERRARD
HEATHER M. RICKENBRODE
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,

Plaintiff,

v.

CONSOLIDATED AMUSEMENT
CORPORATION, LTD.; ALOHA
STADIUM AUTHORITY, INC., and
John Tellis, General Manager,

Defendants.

CIVIL NO. CV04 00116 DAE LEK

DECLARATION OF TAMARA M.
GERRARD

DECLARATION OF TAMARA M. GERRARD

I, TAMARA M. GERRARD, hereby declare under penalty of perjury that
the following is true and correct to the best of my knowledge:

1. I am an attorney duly licensed to practice in the State of Hawaii
and represent Defendants and Judgment Creditors CONSOLIDATED
AMUSEMENT CORPORATION, LTD and JOHN TELLIS (hereinafter
"Judgment Creditors") in the above-entitled matter. All statements herein are made
upon personal knowledge unless otherwise specified.

2. On July 26, 2005 Judgment was entered in this action in favor
of Defendants and against Plaintiff and Judgment Debtor GILBERT GITHERE
(hereinafter "Judgment Debtor"). Attached hereto as Exhibit "A" is a true and
correct copy of the Judgment.

3. On that date, the Court issued its Order Granting Defendants Aloha Stadium Authority, Inc. and Stephen Lee's Motion to Dismiss Second Amended Complaint; Granting Defendants Consolidated Amusement Company, Ltd. and Jon Tellis' Motion for Summary Judgment; and Denying Plaintiff's Motion to Amend Complaint and Counter Motion for Summary Judgment. Attached hereto as Exhibit "B" is a true and correct copy of that Order.

4. On August 10, 2005, Judgment Creditors filed their Bill of Costs and Memorandum in Support of Bill of Costs. This Court awarded costs taxed in the amount of \$4,495.01 on September 6, 2005. Attached hereto as Exhibit "C" is a true and correct copy of the Bill of Costs taxed against Judgment Debtor.

5. Judgment Creditors are still the owner and holder of the Judgment, and the principal sum of \$4,495.01 remains due, owing, and unpaid by Judgment Debtor.

6. I sent a letter to Judgment Debtor's counsel on September 7, 2005 requesting immediate payment of the principal sum. Attached hereto as Exhibit "D" is a true and correct copy of that letter.

7. Judgment Debtor never responded to my September 7, 2005 letter.

8. There is an appeal pending by Judgment Debtor from the Judgment. The Judgment, however, has not been reversed or set aside, and remains in full force and effect as against Judgment Debtor.

9. Plaintiff filed a Motion to Stay Execution of Defendants' Bill of Costs on October 3, 2005. Attached hereto as Exhibit "E" is a true and correct copy of that motion.

10. Plaintiff's Motion to Stay Execution of Defendants' Bill of Costs was denied without prejudice by the Ninth Circuit on November 28, 2005. Attached hereto as Exhibit "F" is a true and correct copy of the Ninth Circuit's Order.

11. This Ex Parte Motion is being made to obtain an order by the court to examine Judgment Debtor in order to enforce this Court's Judgment.

Executed this 6th day of December, 2005 at Honolulu, Hawaii.



TAMARA M. GERRARD

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,
Plaintiff,
v.

CONSOLIDATED AMUSEMENT
CORPORATION, LTD.; ALOHA
STADIUM AUTHORITY, INC., and
John Tellis, General Manager,

Defendants.

CIVIL NO. CV04 00116 DAE LEK
DECLARATION OF HEATHER M.
RICKENBRODE

DECLARATION OF HEATHER M. RICKENBRODE

I, HEATHER M. RICKENBRODE, hereby declare under penalty of perjury
that the following is true and correct to the best of my knowledge:

1. I am an attorney duly licensed to practice in the State of Hawaii and
represent Defendants and Judgment Creditors CONSOLIDATED AMUSEMENT
CORPORATION, LTD and JOHN TELLIS (hereinafter "Judgment Creditors") in
the above-entitled matter.

2. I sent a letter to Judgment Debtor's counsel on November 15, 2005
requesting immediate payment of the principal sum, and informing him that
Judgment Creditors would be filing the instant Motion if the sum remained unpaid
by November 28, 2005. Attached hereto as Exhibit "G" is a true and correct copy
of that letter.

3. Judgment Debtor never responded to my November 15, 2005 letter.

4. I sent a letter to Judgment Debtor's counsel on December 1, 2005 requesting immediate payment of the principal sum, and informing him that Judgment Creditors would be filing the instant Motion if the sum remained unpaid by December 6, 2005. Attached hereto as Exhibit "H" is a true and correct copy of that letter.

5. Judgment Debtor never responded to my December 1, 2005 letter.

Executed this 6th day of December, 2005 at Honolulu, Hawaii.

Heather M. Rickenbode
HEATHER M. RICKENBRODE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,

Plaintiff,

v.

CONSOLIDATED AMUSEMENT
CORPORATION, LTD.; ALOHA
STADIUM AUTHORITY, INC., and
John Tellis, General Manager,

Defendants.

CIVIL NO. CV04 00116 DAE LEK

ORDER GRANTING
DEFENDANTS CONSOLIDATED
AMUSEMENT COMPANY, LTD.
AND JOHN TELLIS' EX PARTE
MOTION FOR EXAMINATION OF
JUDGMENT DEBTOR

ORDER GRANTING DEFENDANTS CONSOLIDATED AMUSEMENT
COMPANY, LTD. AND JOHN TELLIS' EX PARTE MOTION FOR
EXAMINATION OF JUDGMENT DEBTOR

TO: GILBERT GITHERE, PLAINTIFF AND JUDGMENT DEBTOR.

IT IS HEREBY ORDERED that you, the above-named Judgment Debtor,

LESLIE E. KOBAYASHI
appear before the Honorable _____, Judge of the above entitled

court, presiding in the above-entitled proceeding in the United States Courthouse,

PJKK Federal Building, 300 Ala Moana Boulevard, Honolulu Hawaii, on

JAN 20 2006
_____, the _____ day of _____, 2005, at the hour of

9:00, A.m., then and there to be examined as to any and all property you may
own or have an interest in and what debts are owing to you. Bring with you all
books, papers and documents you have showing and tending to show what

property you may own or have an interest in and what debts are owing to you.

THIS ORDER SHALL BE NULL AND VOID AND OF NO EFFECT IF NOT
SERVED ON OR BEFORE _____.

DATED: Honolulu, Hawaii, DEC 06 2005

LESLIE E. KOBAYASHI
Judge of the Above Entitled Court

GILBERT GITHERE V. CONSOLIDATED AMUSEMENT CORPORATION,
LTD.; ALOHA STADIUM AUTHORITY, INC., AND JOHN TELLIS,
GENERAL MANAGER; Civil No. CV04 00116 DAE LEK; ORDER
GRANTING DEFENDANTS' EX-PARTE MOTION FOR EXAMINATION OF
JUDGMENT DEBTOR

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,

Plaintiff,

v.

CONSOLIDATED AMUSEMENT
CORPORATION, LTD.; ALOHA
STADIUM AUTHORITY, INC., and
John Tellis, General Manager,

Defendants.

CIVIL NO. CV04 00116 DAE LEK

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and accurate copy of the foregoing document was duly served upon the following individual(s) by hand delivery, addressed as follows:

Andre' S. Wooten, Esq.
1188 Bishop Street, Suite 1909
Honolulu, HI 96813

Attorney for Plaintiff
GILBERT GITHERE

John Gregor, Deputy Attorney
Department of the Attorney General
Labor Division
425 Queen Street
Honolulu, HI 96813

Attorney for Defendant
ALOHA STADIUM AUTHORITY, INC.

DATED: Honolulu, Hawaii, December 6, 2005.

TORKILDSON, KATZ, FONSECA,
MOORE & HETHERINGTON,
Attorneys at Law, A Law Corporation

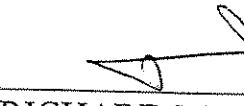

RICHARD M. RAND
TAMARA M. GERRARD
HEATHER M. RICKENBRODE
Attorneys for Defendant
CONSOLIDATED AMUSEMENT
COMPANY, LTD. and JOHN TELLIS

EXHIBIT “B”

ANDRE S. WOOTEN #3887
 Attorney At Law
 Suite 1909, Century Square
 1188 Bishop Street
 Honolulu, Hawaii 96813
 Telephone: (808) 545-4165

FILED IN THE
 UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

DEC 23 2005

at 2 o'clock and 40 min. M
 SUE BEITIA, CLERK

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE-LEK
)	
Plaintiff,	)	NOTICE OF MOTION; MOTION FOR
	)	STAY OF EXECUTION OF COLLECTION
vs.	)	OF COSTS BILLED PENDING APPEAL;
	)	DECLARATION OF COUNSEL; EXHIBIT
CONSOLIDATED AMUSEMENT	)	"A"; CERTIFICATE OF SERVICE
CORPORATION; ALOHA STADIUM)	
AUTHORITY, INC.; and JOHN TELLIS,	)	Hearing: <u>FEB 24 2006</u>
General Manager,	)	Time: <u>9:00 am</u>
Defendants.	)	Judge: <u>DAVID ALAN EZRA</u>
)	

NOTICE OF MOTION

NOTICE IS HEREBY GIVEN that the following Motion for Stay of Execution of
 Collection of Costs Billed Pending Appeal shall come on for hearing before the Honorable

DAVID ALAN EZRA, Judge of the above-entitled court, in his/her courtroom

in the United States Courthouse, 300 Ala Moana Blvd., Honolulu, Hawaii 96850, on

2/24, 2006, at 9 o'clock 9 a.m., or as soon thereafter as counsel
 may be heard.

EXHIBIT B

DATED: Honolulu, Hawaii,

Dec 6, 2005


ANDRÉ S. WOOTEN

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

GILBERT GITHERE,) CIVIL NO. 04-00116 DAE-LEK
vs.)
Plaintiff,) MOTION FOR STAY OF EXECUTION OF
vs.) COLLECTION OF COSTS BILLED
CONSOLIDATED AMUSEMENT) PENDING APPEAL
CORPORATION; ALOHA STADIUM)
AUTHORITY, INC.; and JOHN TELLIS,)
General Manager,)
Defendants.)

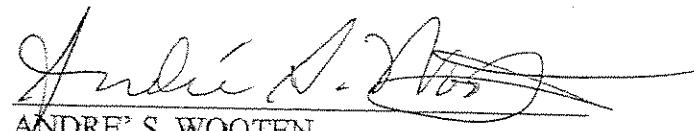
)

MOTION FOR STAY OF EXECUTION OF
COLLECTION OF COSTS BILLED PENDING APPEAL

Comes now Plaintiff GILBERT GITHERE, by and through his attorney of record, André S. Wooten, who hereby petitions this Court for a stay of execution of the collection of the assessment of costs bill levied in this case on November 27, 2005 (Exhibit "A"), as this matter is pending appeal before the Ninth Circuit Court of Appeals at this time.

This Motion is filed pursuant to Rules 7, 8, 12 and 62 of the Federal Rules of Civil Procedure and is supported by the attached Declaration of Counsel, exhibits, the records and files of this case and memorandum attached hereto.

DATED: Honolulu, Hawaii, Dec. 6, 2005


ANDRE' S. WOOTEN
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

GILBERT GITHERE,) CIVIL NO. 04-00116 DAE-LEK
Plaintiff,)
vs.) DECLARATION OF COUNSEL
CONSOLIDATED AMUSEMENT)
CORPORATION; ALOHA STADIUM)
AUTHORITY, INC.; and JOHN TELLIS,)
General Manager,)
Defendants.)

)

DECLARATION OF COUNSEL

ANDRE' S. WOOTEN hereby declares under penalty of perjury as follows:

1. Declarant is the attorney for Plaintiff in the above-entitled matter.

2. This matter is presently on appeal before the Ninth Circuit Court of

Appeals as Plaintiff has filed a Notice of Appeal, the Opening Brief for which is not yet due as of December 12, 2005, and a transcript having been ordered but not yet received.

3. Defendant Consolidated Amusement Company prevailed in a summary judgment motion which denied Plaintiff his constitutional right to a jury trial under the Fourteenth Amendment, due process and equal protection clauses and the First Amendment.

4. Plaintiff has a very good chance of prevailing on appeal based upon new Ninth Circuit cases liberally interpreting files which were not cited by the District Court.

5. The Defendant is a multi-state company operating throughout the west coast, if not the entire U.S.A. Indeed, the contract that they lost that was the subject of this case

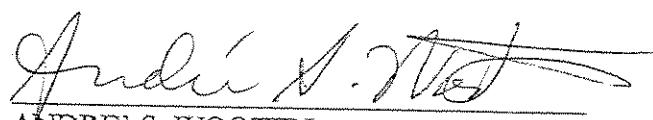
was worth \$15 million a year and was just a small part of their theater and entertainment concession business statewide and nationwide. Plaintiff, on the other hand, is a small independent businessman, a vendor at the swap meet, for whom the assessment of \$4,000.00 in costs is a very high and hard burden, as he seeks to support his family and keep his business above water.

6. Balancing the equities involved and how much a \$4,000 assessment of cost damages prior to an entire resolution of the case mitigates for a stay of execution of the Bill of Costs of in excess of \$4,000 in this case, as the levy of costs would distinctly and directly hamper Plaintiff's ability to continue to do business and prosecute his appeal and deprive him of the resources to do so and, therefore, limit his constitutional rights to petition for redress of the violation of his constitutional rights in the court.

7. Therefore, based upon the balancing of the effect of immediate payment upon the parties, the burden would fall severely upon Plaintiff to pay costs prematurely, whereas the multi-national corporation, Consolidated Amusement Company, Inc., would scarcely feel the temporary denial or receipt of these funds at all.

Wherefore, Plaintiff respectfully requests that the Court grant this petition for a stay in the execution of collection of the Bill of Costs in this case pending appeal and a final resolution of this matter.

Further, Declarant sayeth naught.



ANDRE' S. WOOTEN

UNITED STATES DISTRICT COURT

District of Hawaii

GILBERT GITHERE

V.

BILL OF COSTS

CONSOLIDATED AMUSEMENT CORP., INC.

Case Number: 04-00116 DAE LEK

Judgment having been entered in the above entitled action on _____
 the Clerk is requested to tax the following as costs:

7/26/2005

Date

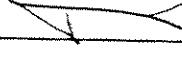
Plaintiff Gilbert Githere

Fees of the Clerk	\$ _____
Fees for service of summons and subpoena	270.00
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	3,376.28
Fees and disbursements for printing	473.73
Fees for witnesses (itemize on reverse side)	36.00
Fees for exemplification and copies of papers necessarily obtained for use in the case	339.00
Docket fees under 28 U.S.C. 1923	
Costs as shown on Mandate of Court of Appeals	
Compensation of court-appointed experts	
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828	
Other costs (please itemize)	
TOTAL	\$ 4,495.01

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed today with postage prepaid to: Andre Wooten, Esq., 1188 Bishop St. #1909, Hon. .

Signature of Attorney: 

Name of Attorney: Tamara M. Gerrard, Esq., Torkildson, Katz, Fonseca, Moore & Hetherington

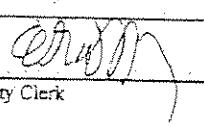
For: Defendants Consolidated Amusement Co., Ltd. and Jon Telles

Date: August 10, 2005

Costs are taxed in the amount of \$4,495.01

Name of Claiming Party

and included in the judgment.

Sue Beitia
Clerk of CourtBy: 
Deputy ClerkSeptember 6, 2005
Date

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE/LEK
)	
Plaintiff,	)	CERTIFICATE OF SERVICE
)	
vs.)	
)	
CONSOLIDATED AMUSEMENT)	
CORPORATION AND ALOHA STADIUM)	
AUTHORITY, INC., John Tellis, General)	
Manager,)	
)	
Defendants.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were delivered upon the following parties at their last-known addresses by means of hand delivery on

December 1, 2005.

CINDY S. INOUYE, ESQ.
JOHN M. CREGOR, JR., ESQ.
Department of the Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Attorneys for Defendant
ALOHA STADIUM AUTHORITY, INC.

RICHARD M. RAND, ESQ.
TAMARA M. GERRARD, ESQ.
Torkildson, Katz, Fonseca, Moore & Hetherington
700 Bishop St., 15th Floor
Honolulu, Hawaii 96813

Attorneys for Defendants
CONSOLIDATED AMUSEMENT COMPANY, LTD.
and JOHN TELLIS

DATED: Honolulu, Hawaii, Dec 6, 2005


ANDRE' S. WOOTEN
Attorney for Plaintiff

EXHIBIT "C"

ANDRE S. WOOTEN #3887
 Attorney At Law
 Suite 1909, Century Square
 1188 Bishop Street
 Honolulu, Hawaii 96813
 Telephone: (808) 545-4165

Attorney for Plaintiff

FILED IN THE
 UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

DEC 23 2005

at 2 o'clock and 35 min P.M.
 SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

GILBERT GITHERE,	) CIVIL NO. 04-00116 DAE-LEK
Plaintiff,	) EX PARTE MOTION TO SHORTEN TIME
vs.	) FOR HEARING ON MOTION FOR STAY
CONSOLIDATED AMUSEMENT	) OF EXECUTION OF COLLECTION OF
CORPORATION; ALOHA STADIUM	) COSTS BILLED PENDING APPEAL;
AUTHORITY, INC.; and JOHN TELLIS,	) DECLARATION OF COUNSEL; ORDER
General Manager,	) GRANTING EX PARTE MOTION TO
Defendants.	) SHORTEN TIME FOR HEARING ON
	) MOTION FOR STAY OF EXECUTION OF
	) COLLECTION OF COSTS BILLED
	) PENDING APPEAL; CERTIFICATE OF
	) SERVICE
)
	) Hearing: <u>FEB 24, 2006</u>
	) Time: <u>9 AM</u>
	) Judge: <u>DAVID ALAN EZRA</u>

EX PARTE MOTION TO SHORTEN TIME FOR
HEARING ON MOTION FOR STAY OF EXECUTION
OF COLLECTION OF COSTS BILLED PENDING APPEAL

Plaintiff GILBERT GITHERE, by and through his attorney, André S. Wooten, hereby moves this Court, ex parte, for an order shortening the time for hearing on his Motion for Stay of Execution of Collection of Costs Billed Pending Appeal lodged on December 7, 2005.

EXHIBIT C

This Motion is made on the grounds that good cause exists for a shortened time for hearing, as presented herein.

This Motion is based upon Rules 8, 12, 24, 26 and 34 of the Federal Rules of Civil Procedure, Rule 7.5 of the Local Rules, the attached Declaration of Counsel, and such further information as may be presented at a hearing on the Motion.

DATED: Honolulu, Hawaii,

Dec 8, 2002



ANDRE S. WOOTEN

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

GILBERT GITHERE,) CIVIL NO. 04-00116 DAE-LEK
vs.)
Plaintiff,) DECLARATION OF COUNSEL
vs.)
CONSOLIDATED AMUSEMENT)
CORPORATION; ALOHA STADIUM)
AUTHORITY, INC.; and JOHN TELLIS,)
General Manager,)
Defendants.)

DECLARATION OF COUNSEL

ANDRE' S. WOOTEN hereby declares under penalty of perjury as follows:

1. Declarant is the attorney for Plaintiff in the above-entitled matter.
2. This matter is presently on appeal before the Ninth Circuit Court of Appeals as Plaintiff has filed a Notice of Appeal, the Opening Brief for which is not yet due as of December 12, 2005, and a transcript having been ordered but not yet received.
3. Defendant Consolidated Amusement Company prevailed in a summary judgment motion which denied Plaintiff his constitutional right to a jury trial under the Fourteenth Amendment, due process and equal protection clauses and the First Amendment.
4. Plaintiff has a very good chance of prevailing on appeal based upon new Ninth Circuit cases liberally interpreting files which were not cited by the District Court.
5. The Defendant is a multi-state company operating throughout the west coast, if not the entire U.S.A. Indeed, the contract that they lost that was the subject of this case

was worth \$15 million a year and was just a small part of their theater and entertainment concession business statewide and nationwide. Plaintiff, on the other hand, is a small independent businessman, a vendor at the swap meet, for whom the assessment of \$4,000.00 in costs is a very high and hard burden, as he seeks to support his family and keep his business above water.

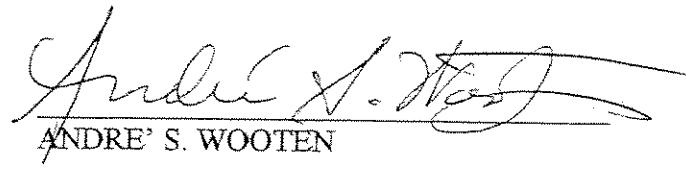
6. Balancing the equities involved and how much a \$4,000 assessment of cost damages prior to an entire resolution of the case mitigates for a stay of execution of the Bill of Costs of in excess of \$4,000 in this case, as the levy of costs would distinctly and directly hamper Plaintiff's ability to continue to do business and prosecute his appeal and deprive him of the resources to do so and, therefore, limit his constitutional rights to petition for redress of the violation of his constitutional rights in the court.

7. Therefore, based upon the balancing of the effect of immediate payment upon the parties, the burden would fall severely upon Plaintiff to pay costs prematurely, whereas the multi-national corporation, Consolidated Amusement Company, Inc., would scarcely feel the temporary denial or receipt of these funds at all.

8. Defendant Consolidated has filed an Ex Part motion to execute and collect upon the cost bill. And Plaintiff argues that as the appeal is pending such efforts are pre-mature and prejudicial to Plaintiff-Appellant.

Wherefore, Plaintiff respectfully requests that the Court grant this petition for a stay in the execution of collection of the Bill of Costs in this case pending appeal and a final resolution of this matter.

Further, Declarant sayeth naught.



Andre S. Wooten

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE/LEK
)	
Plaintiff,	)	ORDER GRANTING EX PARTE MOTION
	)	TO SHORTEN TIME FOR HEARING ON
vs.	)	MOTION FOR STAY OF EXECUTION OF
	)	COLLECTION OF COSTS PENDING
CONSOLIDATED AMUSEMENT	)	APPEAL
CORPORATION AND ALOHA STADIUM)	
AUTHORITY, INC., John Tellis, General)	
Manager,)	
)	
Defendants.)	
)	

ORDER GRANTING EX PARTE MOTION TO
SHORTEN TIME FOR HEARING ON MOTION FOR STAY
OF EXECUTION OF COLLECTION OF COSTS PENDING APPEAL

The Ex Parte Motion to Shorten Time for Hearing on Motion for Stay of Execution of Collection of Costs Billed Pending Appeal having come before this Honorable Court, and the Court having examined the Declaration of Counsel and the records and files herein, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Ex Parte Motion to Shorten Time for Hearing on Motion for Stay of Execution of Collection of Costs Billed Pending Appeal is granted and that the Motion for Stay of Execution of Collection of Costs Billed Pending Appeal shall be heard before the Honorable _____, Judge of the above-entitled court, in his/her courtroom in the United States Courthouse, 300 Ala Moana Blvd., Honolulu,

Hawaii, at _____ o'clock _____.m. on _____ or as soon thereafter as counsel
may be heard.

DATED: Honolulu, Hawaii, _____

Judge of the Above-Entitled Court

DENIED

DAVID ALAN EZRA

UNITED STATES DISTRICT JUDGE

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE/LEK
)	
Plaintiff,	)	CERTIFICATE OF SERVICE
)	
vs.)	
)	
CONSOLIDATED AMUSEMENT)	
CORPORATION AND ALOHA STADIUM)	
AUTHORITY, INC., John Tellis, General)	
Manager,)	
)	
Defendants.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were delivered upon the following parties at their last-known addresses by means of hand delivery on

CINDY S. INOUYE, ESQ.
JOHN M. CREGOR, JR., ESQ.
Department of the Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Attorneys for Defendant
ALOHA STADIUM AUTHORITY, INC.

RICHARD M. RAND, ESQ.
TAMARA M. GERRARD, ESQ.
Torkildson, Katz, Fonseca, Moore & Hetherington
700 Bishop St., 15th Floor
Honolulu, Hawaii 96813

Attorneys for Defendants
CONSOLIDATED AMUSEMENT COMPANY, LTD.
and JOHN TELLIS

DATED: Honolulu, Hawaii,

De 8, 2005


ANDRE S. WOOTEN

Attorney for Plaintiff

NO. 05-16738

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GILBERT GITHERE,	) CIVIL NO. 04-00116 DAE-LEK
)
Plaintiff-Appellant,	) CERTIFICATE OF SERVICE
)
vs.)
)
CONSOLIDATED AMUSEMENT)
CORPORATION INC.; JOHN)
TELLIS, General Manager of)
Consolidated Amusement Inc.,)
)
Defendants-Appellees,)
)
and)
)
ALOHA STADIUM AUTHORITY)
INC.,)
)
Defendant.)
)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following parties at their last-known address by means of hand delivery on

January 4, 2006.

RICHARD M. RAND, ESQ.
TAMARA M. GERRARD, ESQ.
Torkildson, Katz, Fonseca, Moore & Hetherington
700 Bishop St., 15th Floor
Honolulu, Hawaii 96813

Attorneys for Defendants-Appellees

CINDY S. INOUYE, ESQ.
JOHN M. CREGOR, JR., ESQ.
Department of the Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Attorneys for Defendant
ALOHA STADIUM AUTHORITY, INC.

DATED: Honolulu, Hawaii,

Jan 3, 2006


ANDRE' S. WOOTEN
Attorney for Plaintiff